

MINUTES
OF
THE UTAH RADIATION CONTROL BOARD
May 6, 2005
Department of Environmental Quality (Bldg. #2)
Conference Room 101
168 North 1950 West
Salt Lake City, Utah 84114-4250

BOARD MEMBERS PRESENT

Karen S. Langley, M.S., Chair,
Stephen T. Nelson, Ph.D., Vice Chair,
Dane Finerfrock, Executive Secretary
Keith C. Barnes, J.D.
Kent J. Bradford, P.G.
Linda M. Kruse, M.S.
Robert S. Pattison, B.S.
John W. Thomson, M.D.

PUBLIC

Fred Craft, Plateau Resources
Jason Groenewold, HEAL Utah
Joe Hackman, Envirocare of Utah, LLC
Tye Rogers, Envirocare of Utah, LLC
Vern Rogers, URS

BOARD MEMBERS ABSENT/EXCUSED

Dianne R. Nielson, Ph.D., Director of DEQ
Rod O. Julander, Ph.D.
Joseph K. Miner, M.D.
Gregory G. Oman, D.D.S., B.S.
Dan L. Perry, B.S.

**DRC STAFF/OTHER DEQ MEMBERS
PRESENT**

Bill Craig, DRC Staff
Gwyn Galloway, DRC Staff
Craig Jones, DRC Staff
John Hultquist, DRC Staff
Loren B. Morton, DRC Staff
Fred Nelson, Attorney for DEQ
William J. Sinclair, Deputy Director for DEQ
Yoli Shropshire, DRC Staff
Doug Wong, DRC Staff

GREETINGS/MEETING CALLED TO ORDER

The Utah Radiation Control Board convened in DEQ Building #2, Room 101, 168 North 1950 West, and Salt Lake City, Utah. Karen S. Langley, Chair, called the meeting to order at 2:00 p.m. She welcomed the Board Members and the public. Karen Langley indicated that if the public wished to address any items on the agenda, they should sign the public sign-in sheet. Those desiring to comment would be given an opportunity to address their concerns during the comment period.

I. APPROVAL OF MINUTES (Board Action Item)

a. Approval of January 7, 2005 Minutes

Karen S. Langley, Chair, asked the Board Members if they had any corrections to the minutes of March 4, 2005. Stephen T. Nelson, Vice Chair, proposed the following changes to the Minutes.

1. Page 8, Item V. a., last paragraph, first sentence which reads: “ A Board Member asked Mr. Creamer . . . in the State of Utah **effected** his decision? **Changed to read: “. . . affected** his decision?”

Karen S. Langley, Chair, proposed the following change to the Minutes:

2. Page 6, Item VII. a., second paragraph, third sentence which reads: “The method of sterilization they want **use** involves radiation . . .”
Change to read as: “. . . **to use** involves radiation . . .”

MOTION MADE BY LINDA M. KRUSE TO APPROVE THE MINUTES WITH THE CORRECTED CHANGES OF MARCH 4, 2005 SECONDED BY STEPHEN T. NELSON.

MOTION CARRIED AND PASSED UNANIMOUSLY

II. RULES (Board Action Item)

a. Qualified Experts: Suggested Rule Changes to R313-16-293 And R313-16-296 – Dane Finerfrock

Dane L. Finerfrock, Executive Secretary, referred back to the Board's March 4, 2005, Board Meeting. On March 4, 2005, the Board considered an out-of-State application. The applicant was Qualified Expert in the State of Utah. The out-of-state applicant had not conducted the necessary inspections in the State of Utah. Two in-State inspections are required per-year for each-year that a Qualified Expert applies to be registered. The Board denied the out-of-state applicant Qualified-Expert status in Utah. The Board had questions about the process for reinstating the out-of-state individual's Qualified-Expert status in Utah. Dane said he and Craig Jones, Section Manager, evaluated the rule extensively, and made

changes to the rule. Dane asked the Board Members to refer to the supplemental-pages in the paper titled: "Rational For Revisions R313-16-293 and 296, Qualified Experts." Dane discussed the specific changes that were made to the rules. The changes are as follows:

1. **R313-16-293(3)** – requires the submission of two Utah inspection-reports per-year for work performed within the last two years. This requirement is consistent with the renewal requirement in R313-16-296.
2. **R313-16-296(1)** - has been reformatted to include subsections (a) and (b). Also, an introductory statement was added to clarify that timely-renewal of a registration certificate involves the completion of both subsections.
3. **R313-16-296(2)** - was renumbered. It is now subsection (b) of R313-16-296(1). This includes a requirement that a qualified-expert must attach documentation of performing a minimum of 2 Utah inspections. They must provide documentation for 2 inspections for each year they were approved to be a Qualified Expert in Utah. In addition, new requirements were added: if an individual does not meet the required, minimum, Utah-inspections, s/he could submit work completed in another jurisdiction. The applicants must submit documentation of four "other-jurisdiction inspections."
4. **R313-16-296(2)** – is a new section. It clarifies the consequences for failing to renew a registration certificate. This section will also be made gender neutral: changing the word "his" to "a," and also deleting the words "in Utah" and replacing them with "that will be accepted by the Executive Secretary."

RECOMMENDATION: The Executive Secretary recommends the approval of the changes to rules R313-16. He recommended the rule changes "go forward" for a 30-day public-comment. After the public comment, the rule changes will be brought to the Board for final approval.

MOTION MADE BY KENT J. BRADFORD TO APPROVE THE CHANGES TO R313-16, RECOMMENDCED BY THE EXECUTIVE SECRETARY, AND FOR A 30-DAY PUBLIC-COMMENT PERIOD. MOTION SECONDED BY KEITH C. BARNES.

MOTION CARRIED AND PASSED UNANIMOUSLY

- b. **R313-12 “General Provision”; R313-15 "Standards for Protection Against Radiation”; R313-19 “Requirements of General Applicability to Licensing of Radioactive Material”; R313-22 “Specific Licenses”; and R313-32 “Medical Use of Radioactive Material.”**

Gwyn Galloway, Health Physicist, said at the March 4, 2005, Board Meeting the Executive Secretary recommended the approval of the proposed changes to R313-12, R313-15, R313-19, R313-22, and R313-32, and the Executive Secretary recommended the Board's approval for a 30-day, public-comment period. The Board approved the proposed changes and the public-comment period. On April 1, 2005, the "proposed changes" were published in the Utah Rules Digest. The public comment period was from April 1, 2005, through May 2, 2005. There were no comments regarding the proposed changes.

If the Board approves of DRC's proceeding to final-rulemaking, the Division will notify all medical licensees of the effective date and will provide copies of the "information notices" that were previously issued by the U.S. Nuclear Regulatory Commission to medical licensees regarding the changes to 10 CFR 35.

RECOMMENDATION: The Executive Secretary recommended the Board approve making the proposed rule-changes. The effective date would be May 13, 2005.

MOTION MADE BY STEPHEN T. NELSON TO APPROVE THE PROPOSED-CHANGES TO RULES R313-12, R313-15, R313-19, R313-22, R313-32 AND TO MAKE THE CHANGES EFFECTIVE ON MAY 13, 2005. MOTION SECONDED BY JOSEPH K. MINER.

MOTION CARRIED AND PASSED UNANIMOUSLY

III. RADIOACTIVE MATERIALS LICENSING/INSPECTION

No Items

IV. X-RAY REGISTRATION/INSPECTION

No Items

V. RADIOACTIVE WASTE DISPOSAL (Board Information Item) – John Hultquist

- a. **Envirocare's License Amendment Request to Expand Operations into Section 29, Toole County, UT:**

John L. Hultquist, Section Manager, informed the Board of Envirocare's recent amendment-request. He said Envirocare's License Amendment 21 went out for public comment. Six items were grouped into License Amendment 21. The items are:

1. Change Envirocare's name from Envirocare of Utah, Inc., a corporation, to Envirocare of Utah LLC, a Limited Liability Company.
2. Incorporate Envirocare's portable-gauge license into Envirocare's radioactive, waste-material license.
3. DRC will change the language in Envirocare's license condition 39 to make it consistent with language in License Condition 76.
4. Outstanding issues that were "pushed aside for a while" were resolved, such as an investigation into Envirocare's dosimetry program. Envirocare has upgraded their dosimetry program.
5. Another minor issue was Envirocare's "Site, Radiological Security-Plan," which was implemented after the theft of some tools. This occurred a number of years ago. Envirocare has also requested to remove the buffer zone around the restricted area.
6. The last and major issue was for 536 acres, located in Section 29, to be included in Envirocare's license.

License Amendment 21 went to public comment March 15, 2005, through April 15, 2005. On March 29, 2005, a public interest group submitted a written request to extend the comment period, and they requested a public hearing. The Executive Secretary granted the public hearing, but did not extend the comment period. On April 14, 2005, a hearing was held in this building. There were approximately 12 people in attendance, and 9 individuals made comments during the hearing. The concerns and issues that were "brought up" during the comment period were: (1) request to extend the public-comment period; (2) land ownership issue; (3) the changing of Envirocare's name to make Envirocare a limited liability corporation (LLC); (4) the lack of details in the extension request; (5) the legislative audit findings; (6) the incorporation of the sealed sources into the radioactive-waste license; (7) the one "exposure-rate change" regarding Condition 39; (8) "not in my backyard;" and (9) expansion of the disposal area for radioactive-waste.

The DRC received 14 written-comments, during the public-comment period, and the written-comments were similar to those made at the public hearing. Once the public-comment period closed, the Governor and the "Special Session" did not take up the issue of "standing in Section 29." Envirocare

submitted a letter, however, requesting to suspend the expansion into Section 29. At this point, the Executive Secretary is going to continue with Amendment 29. He will also "move forward" with the five other issues. Envirocare's expansion into Section 29 has been "tabled" for a while. The DRC has made responses to the public comments, and the responses are in the DRC's files for anyone to review.

Comments from Board Members:

Stephen T. Nelson asked Dane, if he anticipated the expansion issue to resurface again.

Dane responded that Envirocare does anticipate the "expansion issue" to resurface. He said that Envirocare had met with him to try to prepare, resolve and complete their expansion-request. Envirocare would like their expansion-request to complete the "DRC approval-process" in time for the 2006 legislative-session. The DRC anticipates having the "expansion process" completed by December 2005.

John W. Thompson asked what the practical implications were in the change from a corporation to a Limited Liability Corporation (LLC).

Fred Nelson, Attorney for DEQ responded: Under Utah law, there were three, primary, business-organizations authorized by law: a corporation, a partnership, and a sole-proprietorship. A partnership has certain tax advantages, but has certain liability problems: each of the partners could be held responsible for the debts of the group. A corporation, on the other hand, has "liability protections." The individual shareholders and officers are not specifically liable, unless they step outside what is called the "corporate veil." However, a corporation carries "tax-detriments." A corporation can have double taxation. The corporation is taxed, and its monies are distributed to shareholders.

Consequently, a number of years ago, the Legislature set up a new system. It is the limited liability corporation (LLC). It does not change "corporation liability." The LLC takes advantage of the corporate liability-protections, which Envirocare has in place now. It also gives LLCs tax-advantages similar to a partnership. The liability aspects of corporations and LLCs are the same. Under the Radiation Control Rules, Envirocare will be required to meet the same financial-assurance requirements, and Envirocare is required to meet the same insurance requirements. The LLC enhances Envirocare's ability to get tax advantages. There has been a lot of movement in the business world toward limited liability corporations (LLCs). The use of LLCs has expanded to general businesses.

VI. URANIUM MILL TAILINGS UPDATE (Board Information item) – Bill Sinclair

a. DOE Decision Regarding Moab Mill Tailings Remediation

Bill Sinclair, DEQ Deputy-Director, reported on the status of the Moab Millsite remediation. On April 6, 2005, the Department of Energy (DOE) announced a preferred alternative for remediation of the Moab Millsite uranium mill tailings. This alternative included active groundwater remediation of the current site and offsite disposal of the tailings pile and other contaminated materials to the proposed Crescent Junction disposal site. A current EIS is in preparation and the final DOE "Record of Decision" will be issued following the release of the final EIS for the Moab Millsite. This decision reflects tremendous efforts of stakeholders to reach a workable solution where Grand County, Moab City, and various state and federal agencies have contributed to this positive outcome.

Currently, DEQ is trying to resolve numerous comments that were put in the EIS. Most of the comments were regarding "moving the pile" versus "leaving the pile in-place;" consequently, the DOE's decision to make the preferred, disposal-alternative off-site, has evaporated most of the comments. Bill referred the Board Members to information in the Board's supplemental packet regarding DOE's news release, as well as a news release from DEQ. DEQ's "news-release" indicated DEQ's pleasure with the decision made by DOE.

Bill Sinclair said that DEQ would like the Board to recognize and thank Loren Morton for his involvement in the project. He said Loren was the "key person" in putting-together a series of comments. DEQ felt the comments were very compelling to the DOE's decision in favor of off-site disposal. Bill said the DEQ appreciated all of Loren's work, time and energy on this particular project. DEQ is currently involved in meetings scheduled with Grand County and most of the stakeholders to talk about how the remediation-project will proceed.

VII. OTHER DIVISION ISSUES (Board Information item)

a. Ethics Act and Conflict of Interest – Fred Nelson

Fred Nelson, Attorney for DEQ, said Dianne R. Nielson asked him to brief the Board Members on "State Ethics Law requirements" at the beginning of each New Year. About 15 to 16 years ago, the Utah Legislature made a determination that Utah had numerous Boards in the State, and the State of Utah needed to be covered under both the Liability Protection Provisions of Utah Law, and covered under the State's Ethics Law. Consequently, the

Legislature applied the Public-Employees, Ethics Act to public officers. The Board fits into the category of public officers.

He said there was an updated-memorandum in the Board packet, which described the law. Fred briefly discussed the items in the Ethics Act and DEQ's Conflict of Interest Policy. Fred said one of the underlying purposes for the Ethics Act is "Disclosure." It is recognized that as Members of the Board, you bring with you conflicts of interest. Under the statute, each Board Member represents different groups and interests, and that is why you are on the Board. He said the issue of "conflict of interest" comes-up immediately because of that fact.

The obvious conflict of interest "comes up," if a Board Member were also an employee of a company appealing a permit requirement or notice of violation. The Board Member would have an obligation to recluse himself or herself, because the Board Member would have a "direct tie" to an adjudicated procedure.

b. Introduction of New Employee – Dane L. Finerfrock

Dane L. Finerfrock, Executive Secretary, introduced Doug Wong. Doug Wong came from the Division of Water Quality, where he had been working for four-years. He graduated from the University of Utah with a major in Biology and a minor in Chemistry. Doug is currently "in training" and learning to be an X-ray inspector. There will be times in the future where Doug will give presentations to the Board.

VIII. Public Comment

Jason Groenewold, Director of HEAL Utah, requested the DRC Board to consider changing the way public notification is being made for various modification requests from Envirocare. He said the notification for Envirocare of Utah, LLC in Item V., with respect to the expansion on their license for waste disposal, was posted in the newspaper. He said it was a significant notification. The public needed to be aware of it, but the only notification was a legal notice buried in the legal classification advertisements of the Salt Lake Tribune and Deseret News. Jason felt this manner of "notifying the public" could not get to the appropriate people, people who are concerned about these issues. If the public "missed it" or did not happen to read the paper that day, the interested-public would not have known that Envirocare's proposal was out for public comment.

Jason said he would like to see improvement, in the future, in the way the public was being notified of significant issues, like the public notification of

Envirocare's license, expansion request. Jason said he requested that issues like "Envirocare's expansion" be e-mailed to him in the future. He asked the Board to consider, if there could be more the Division could do to notify the public.

Dane Finerfrock said he had talked to Jason, and he had identified weaknesses in DRC's notification-process. He said the DRC had taken steps to fix them. He said the DRC was required to publish legal-notices, and the DRC would continue to publish legal-notices in the appropriate newspapers. The DRC has also posted Envirocare's expansion application on the DRC's website; consequently, it is available on the Division's website. The DRC will be subscribing to a service call LIST-SERV. In a couple of weeks, LIST-SERV and DEQ's IT staff will initiate the service. A link will be available on the DRC web page. If an individual wishes to receive information about Board Meetings, other Division issues, notices, and public notices, they can subscribe to LIST-SERV—and they will automatically receive the notifications. If the subscriber does not want to read the LIST-SERV e-mail, s/he can "click" the delete-button. It is the subscriber's responsibility to keep her/his e-mail address current with LIST-SERV. The subscriber can also unsubscribe, if s/he no longer wants the information. The DRC will have three notification points available; (1) timely legal-notification in the paper; (2) timely, web-posting available on the web page; and (3) LIST-SERV e-mail notifications.

IX. OTHER ISSUES

Next Board Meeting – June 3, 2005, DEQ Bldg #2, 168 North 1950 West, Conference Room 101, Salt Lake City, Utah, 2:00 – 4:00 P.M.

THE BOARD MEETING ADJOURNED AT 2:50 P.M.